IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.580 OF 1995

The State of Maharashtra]..Appellant (Ori.Complainant)

Versus

1. Mohan Bapusaheb Malgaonkar Age 52 yrs. Occ: Medical Practitioner, r/o Pen Dist. Raigad]

2. Manoj Ramdas Sawant, Age 28 yrs. r/o Kalgut, Tal.Nagdesh Mhapsa, Goa]..Respondent (Ori.Accused)

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Mr.A.S.Shitole, A.P.P. for State
Ms.Manisha Patil i/b Mr.A.P.Mundergi Advocate for Respondents

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 8,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant has challenged the judgment and order dated 24th July, 1995 passed by the learned Judicial Magistrate F.C. Pen in R.C.C.No. 49 of 1989. By the said judgment and order, the learned Magistrate acquitted the respondents i.e. original accused nos.1 and 2 of the offence under Sections 498-A, 323 and 506(II) of

IPC.

2. Briefly stated the prosecution case is as under:

. That the complainant P.W.1 Dr.Usha Malgaonkar was married to respondent no.1 Dr.Mohan Malgaonkar on 31st January, 1973. According to the complainant, though her husband was a doctor, he did not work and he used to demand money from her, and if the money was not given to her husband, her husband used to illtreat and beat her. That prior to her marriage her husband was married to one another lady and this fact was suppressed by her husband and thereby complainant was deceived. She came to know about this fact after 45 days of her marriage. According to the complainant, her husband had various affairs with his colleagues, nurses and other ladies. It is further the case of the complainant that on 31st March, 1989 at about 3-00 to 4-00 a.m. her husband woke her up and told her not to take loan from the bank. The said loan was being taken by the complainant for the purpose of purchasing professional equipments for the hospital. She tried to convince her husband but he got annoyed and told her that if she wanted to take loan, she must transfer all the property i.e. hospital building etc. in his name. Her husband also produced some

papers and asked her to sign them. However, she refused to sign the same. Whereupon, her husband got annoyed and made attempt to strangulate her neck with both his hands. The accused then caught her head and hit the same against the cot. Due to this, her nose and mouth started bleeding. The complainant informed this fact to her brother P.W.2 Mukund Bakare. Her brother came from Poona and thereafter, she lodged complaint against her husband and accused no.2 who is the son of the sister of her husband. Thereafter investigation commenced. After completion of investigation, the charge-sheet came to be filed.

3. During the course of trial, charge under Sections 498-A, 323 and 506(II) read with Section 34 of IPC came to be framed against both the accused. Both of them pleaded not guilty to the said charge and claimed to be tried. The defence of the accused no.1 is that he and the complainant had jointly purchased property for which he filed suit in the Court of Alibag and therefore, he is falsely involved in this case. The defence of accused no.2 is that he being the relative of accused no.1, he is falsely involved in this case.

4. After going through the evidence adduced by the

prosecution, the learned Magistrate acquitted the respondents as stated in para 1 above. Hence, this appeal.

5. I have heard Shri.A.S.Shitole, the learned A.P.P. for the State and Ms. Manisha Patil, the learned advocate for the respondents. I have also perused the record pertaining to the present case. After carefully considering the matter, I am of the opinion that this appeal deserves to be dismissed.

6. The star witness in the present case is the complainant P.W.1 Dr.Usha Malgaonkar. In her examination in chief, Dr.Usha Malgaonkar has stated that though her husband was a Doctor, he was unemployed and he was dependent on her. complainant P.W.1 Usha has further stated that if the money was not given to her husband, her husband used to illtreat and beat her. That prior to her marriage her husband was married to one another lady and this fact was suppressed by her husband and thereby complainant was deceived. She came to know about this fact only 45 days after her marriage. According to the complainant, her husband had various affairs with his colleagues, nurses and other ladies. It is further the case of the complainant that on 31st March, 1989 at about 3-00

to 4-00 a.m. her husband woke her up and told her that not to take loan from the bank. The said loan was being taken by the complainant for the purpose of purchasing professional equipments for the hospital. She tried to convince her husband but he got annoyed and told her that if she wanted to take loan, she must transfer all the property i.e. hospital building etc. in his name. Her husband also produced some papers and asked her to sign them. However, she refused to sign. Whereupon, her husband got annoyed and made attempt to strangulate her neck with both his hands. The accused then caught her head and hit the same against the cot. Due to this, her nose and mouth started bleeding.

. Thus, according to the complainant P.W.1 Dr.Usha, the allegations against her husband are that (1) prior to her marriage with accused no.1, accused no.1 was married to some other lady and that he did not inform this fact to her and thus, he had deceived her, (2) though her husband was a Doctor, he was not employed anywhere and he did not do any work and thus he was dependent on her for money and if she did not give money, he used to threaten and beat her, (3) her husband had illicit relations with other ladies, (4) on 31st March, 1989 her husband woke her from sleep and asked her not to take loan

from the Bank and he told her that if she wanted to take loan, she should transfer all the property i.e. hospital etc. in his name. On her refusing to do so, he pressed her neck and banged her head against the bed and (5) that the accused nos.1 and 2 had written certain letters Exhibits-49 to 53 from which the fact relating to illicit relations of her husband and other facts have been admitted by accused no.1. It is pertinent to note that in her evidence before the Court, Complainant P.W.1 Dr.Usha has not made any single allegation against accused no.2. All the allegations are against her husband i.e. accused no.1.

7. The first allegation made by the complainant is that her husband was married prior to her marriage with him and this fact was not disclosed to her and thus she was deceived by accused no.1. From her examination in chief it appears that she did not know her husband prior to her marriage. However, from the cross examination of the complainant P.W.1 Dr.Usha, it is clear that in the year 1970-71 i.e. almost two years before her marriage, she was acquainted with the accused no.1. After completion of her M.D. in Gynaecology at Bombay, she came to Cama Hospital for housemanship. Accused no.1 was Registrar at Cama Hospital at Bombay at that time.

She came in contact with accused no.1 and ultimately fell in love with him. She had spent 15 months in the company of accused no.1. It is further pertinent to note that she had gone to Goa with accused no.1 in connection with proceedings relating to conjugal rights between accused no.1 and his wife. There was divorce between accused no.1 and his wife in the year 1980. Thus, the marriage of the complainant with accused no.1 in 1973 was an illegal marriage. Despite the complainant knowing that her marriage was illegal marriage, she continued to reside with accused no.1 and thereafter, a daughter was born to her out of the wedlock with accused no.1. It is clear that complainant was closely associated with accused no.1 for 15 months prior to her marriage. She knew the accused no.1 since 1970-71 from the time of her housemanship at Cama Hospital where the accused no.1 was Registrar in the said hospital. After her marriage in 1973, if the complainant came to know that accused no.1 was already married she did not react to this fact and admittedly she has helped the accused no.1 in getting divorce from his wife in 1980 at Goa. From the evidence on record, it appears that she had knowledge about the first marriage of accused no.1 prior to her marriage. In such case, there would be no question of the

complainant being deceived by the accused no.1. Thus, there is no force in the first allegation.

8. The next allegation against the accused no.1 is that he was unemployed and that she maintained him. As he was unemployed, he used to demand money from her and on her refusal, he used to threaten and beat her. However, in the cross examination, it has come on record that prior to her marriage, accused no.1 was working as Registrar in Cama Hospital. It has also come on record that after the marriage, accused no.1 was serving as Medical Officer in the hospital at I.I.T. Powai at Bombay in 1973-74. Her evidence clearly shows that after the marriage, accused no.1 was in service as Medical Officer at different places at different Government Hospitals. In 1978, the complainant and accused no.1 came to Pen and started private practice. Thus, this means that he was earning both before and after the marriage with the complainant. These admissions of the complainant go to show that he was not in need of any finance from the complainant for any purpose whatsoever.

9. The third allegation against the accused no.1 is that he demanded the hospital building at Pen to be transferred in his name by the complainant. On her

refusing to do so, he beat her. In respect of hospital property, it is admitted by the complainant that accused no.1 had himself started hospital at Pen on 5th February, 1978 and at that time, the complainant was serving in B.A.R.C. hospital. The hospital has been named as Sitamai Hospital in the name of her mother in law i.e. mother of accused no.1. The complainant has further admitted that it was accused no.1 who had obtained loan from State Bank of India for Sitamai Hospital. This evidence and other evidence on record clearly show that complainant was not concerned with Sitamai hospital property at the beginning when it was started by accused no.1 with a loan from State Bank of India. In such case, there is no question of accused no.1 illegally demanding his property. Accused no.1 was bonafide claimant of this property and even if he demanded the same, it is not an illegal demand. Thus, complainant has not established that there was any illegal demand of the property by her husband.

10. Looking to the evidence on record, her statement that her husband demanded hospital property does not appear to be reliable. The complainant has further stated that on 31st March, 1989 her husband had brought some papers and asked her to sign them. She refused to sign the papers,

hence, the accused pressed her neck and then hit her head against the bed. It is pertinent to note that this aspect about her husband getting some papers and asking her to sign them has not been stated by the complainant in her earlier statement. Thus, the said statement is clearly an improvement and as such, no reliance can be placed on the same.

11. As far as injuries are concerned, it is the specific case of the complainant that after she was injured, she went to the hospital for treatment. She has not produced the medical certificate. So also the Doctor who had examined her or treated her, has not been examined by the prosecution. No injury certificate has been brought on record by the prosecution. Moreover, it is the case of the complainant that she was sleeping on the bed with her husband and when she refused to sign the papers brought by the accused no.1, accused no.1 sat on her chest and pressed her neck by his hands and hit her head against the bed. It is her case that she received injuries on her nose and head. If one looks at the version of the complainant as to how she received injuries, they are not consistent with the injuries to the complainant. There are no injuries on her neck and the only injuries according to complainant, are on her nose and on side of her

head. These injuries are not consistent with the manner of assault by accused no.1 as deposed by the complainant. The complainant has admitted that one maid servant remained in the premises all 24 hours and it is further admitted that at the time of incident, the said maid servant was present. However, maid servant was not examined to corroborate the story of complainant that she received injuries due to assault by accused no.1. Thus, it is seen that there is no material to support the claim of the complainant that she was assaulted by accused no.1 and she received injuries. As stated by me earlier, the genesis of the incident of assault, does not appear to be probable and thus, this raises doubt in the mind regarding assault on the complainant by accused no.1.

12. It is further the case of the complainant that there were illicit relations between her husband and some other ladies. She has relied upon Exhibits 49 to 51 supposedly written by the accused no.1 to her and her brother in which he has admitted the illicit relationship with other ladies. The complainant has also relied upon the letters Exhibits-49 to 53 to support her case that accused nos.1 and 2 used to threaten and harass her. The letters at Exhibits 52 and 53 are according to the complainant, written by

the accused no.1. Many of these letters, have not been signed. It is pertinent to note that all these letters were sent to Handwriting Expert. However, Handwriting Expert could not get any definite opinion that letters were written by accused no.1 or by accused no.2. Moreover, the evidence of panch witness in whose presence, the letters were seized or in whose presence the specimen handwritings were taken, is not reliable. His evidence is of full contradictions and it raises doubt in the mind and makes it unsafe to rely on his evidence.

13. The evidence of P.W.2 Mukund Bakare the brother of complainant and the evidence of P.W.3 Trupta is on the same lines as that of the complainant. I have already observed that evidence of the complainant is not found to be reliable. As far as evidence of P.W.2 Mukund and P.W.3 Trupta are concerned, both of them are interested witnesses. P.W.3 Trupta was staying for most of the time with P.W.2 Mukund. Trupta is the daughter of the complainant. In such case, when the evidence of complainant is found to be unreliable, in my opinion, it would not be safe to rely on the evidence of these two witnesses.

14. As far as accused no.2 is concerned, there is

no allegation made by the complainant against him in her evidence. However, P.W.2 Mukund and P.W.3 Trupta made some allegations against him. However, looking to the fact that complainant herself has not made any allegations against accused no.2 in her evidence, one finds it unsafe to rely on the evidence of her relatives who state about the harassment and illtreatment by accused no.2 to the complainant when the complainant herself does not state so.

15. Looking to the evidence on record, the view of the learned Magistrate while acquitting the respondents is a possible and reasonable view. It is well settled that if the view of acquittal could have been arrived that the mere circumstance that the appellate Court would have taken different view, would be no ground to interfere.

16. In the circumstances, I find no merit in this appeal and the same is dismissed.

[V.K.TAHILRAMANI.J]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.580 OF 1995
(The State of Maharashtra Vs. Mohan Bapusaheb Malgaonkar & Ors.)

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.A.S.Shitole, A.P.P. for State
Ms.Manisha Patil, Advocate for Respondents.

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : DECEMBER 8, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. There is no substance in this appeal and the same is dismissed.

(V.K.TAHILRAMANI,J.)